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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/780,813

02/17/2004

Joseph Florian

263.1

1498

58960

7590

10/30/2008

INTEGRITY IP  
P.O. BOX 757  
LA JOLLA, CA 92038

EXAMINER

LEACH, CRYSTAL I

ART UNIT

PAPER NUMBER

3737

MAIL DATE

DELIVERY MODE

10/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,813	<b>Applicant(s)</b> FLORIAN, JOSEPH	
	<b>Examiner</b> CRYSTAL I. LEACH	<b>Art Unit</b> 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryars et al. (5,807,267) in view of Goodman et al. (4,830,014) in view of Cerwin (5,984,874).

Bryars et al. teach an optical coupling element and a method for in-vivo optical monitoring, wherein the optical coupling element comprises entrance and exit apertures (307A)/(307B) and (313), a photodetector (619), light emitting diodes (618), a lens (621), optical filters (514A)/(514B), (814), (1005) which would be capable of redirecting light beams, a wristwatch (see fig. 1 and 2) comprising the integral elements, a microprocessor (516), (816), (916), (1001) and (1010) capable of operating the wristwatch unit and processing the received signals in order to extract noise, a LCD display on the face of the watch which is capable of producing and displaying a hologram (see fig. 11). The filter is also capable of selectively removing or extinguishing light from an optical path. The light emitting diode functions as an

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illumination source and is capable of transmitting a beam of light to a tissue region of interest. Bryars et al. teach capabilities of detecting and receiving modulated light signals (see col. 8, l. 7-14). The device taught by Bryars is capable of processing an electrical impulse in order to determine a pulse rate (see col. 7, l. 4 – col. 8, l. 47). Furthermore, it would be obvious to one of ordinary skill in the art that since the device emits light, receives light, detects and processes the received light signal, the device has entrance and exit apertures capable of performing the desired function. Bryars et al. do not explicitly teach the dimensions of the apertures. However, it would be obvious to one of ordinary skill in the art that the dimensions of the apertures may be altered or modified as desired by the user and it would be obvious to one of ordinary skill in the art that the device of Bryars et al. is capable of performing the function required by an entrance and exit aperture and is therefore a functional equivalent. Bryars et al. teach an opaque region ( ) and a computer configured to run software for carrying out the method of detecting and processing signals (see col. 9, l. 8-62). See also fig. 1-10 and 12 and col. 3, l. 38 - col. 6, l. 28; col. 10, l. 50 – col. 12, l. 15.

Bryars et al. do not explicitly teach a waveguide, mirror or grating.

Goodman et al. teach an entrance and exit apertures (see col. 10, l. 24-25)

Cerwin teaches a reflective coating (see col. 4, l. 50-51) which is capable of performing the function of the mirror and is therefore a functional equivalent. It would also have been obvious to one of ordinary skill in the art at the time of the invention to substitute a reflective coating for a mirror in order to achieve the same or similar predictable result of light reflection. Cerwin also teaches an optical waveguide (44)

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capable of controlling the transmission of light and angle of incidence, grating (see col. 4, l. 50-52), which is capable of controlling illumination. Cerwin also teaches a waveguide of a pie-wedge shape (see col. 4, l. 39-50). See also col. 6, l. 41-60.

It would have been obvious to one of ordinary skill in the art at the time of the invention to include apertures and a waveguide in the invention of Bryars et al., in light of the teachings of Cerwin, in order to enhance the utility of the device and improve light transmission control capabilities.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goodman et al. (4,830,014) teach a sensor having cutaneous conformance; Conlan (5,197,489) teaches an activity monitoring apparatus with configurable filters; and Palti et al. (6,811,535) teach a device for monitoring a vital sign.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRYSTAL I. LEACH whose telephone number is (571)272-5211. The examiner can normally be reached on Monday through Friday, 8 am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN CASLER/  
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